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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/173,858	10/16/1998	BART ALAN MELTZER	OIN 1004-1	4734
22470	7590	06/19/2009	EXAMINER	
HAYNES BEFFEL & WOLFELD LLP P O BOX 366 HALF MOON BAY, CA 94019			ART UNIT	PAPER NUMBER

DATE MAILED: 06/19/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

09/173,858

Applicant(s)

MELTZER ET AL.

Examiner

Cong Huynh

Art Unit

2178

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 16 December 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

1.) The following heading are not required under the new appeal format; status of claims and grouping of claims.

2.) The brief does not contain a heading for the claims support and drawings analysis.

See attachment.

/Timothy Cole/
T.Cole
Patent Appeal Specialist
571 272 0999

Application Number 9/173858

Letter Regarding Appeal Brief Filed in the New Format

Appellant attempted to follow the new format under the revised Board of Patent Appeals and Interferences (BPAI) final rule (see NOTE below). However, the appeal brief contains substantial formality defects when the Office evaluated the appeal brief under the new format to determine whether the appeal brief is compliant. Therefore, the Office evaluated the appeal brief under the current format required by the provisions of 37 CFR 41.37 that are currently in effect. The appeal brief is held non-compliance for the reasons provided on the attached Notification of Non-Compliant Appeal Brief (37 CFR 41.37) (PTOL-462). See MPEP 1205.02 for more information on the current format.

NOTE: The Office published the BPAI final rule to amend the rules governing practice before the BPAI in *ex parte* patent appeals. See *Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals; Final Rule*, 73 FR 32938 (June 10, 2008), 1332 Off. Gaz. Pat. Office 47 (July 1, 2008). However, the effective date for the BPAI final rule has been delayed. See *Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals; Delay of Effective and Applicability Dates*, 73 FR 74972 (December 10, 2008). In the notice published on November 20, 2008, the Office indicated that the Office will not hold an appeal brief as non-compliant solely for following the new format even though it is filed before the effective date. See *Clarification of the Effective Date Provision in the Final Rule for Ex Parte Appeals*, 73 FR 70282 (November 20, 2008).

Appellant must within the time period set forth in the Notification of Non-Compliant Appeal Brief file a correct brief. The correct brief must either:

1. Comply with the current provisions of 37 CFR 41.37 correcting the defects noted in the Notification of Non-Compliant Appeal Brief; or
2. Comply with the new format set forth in the BPAI final rule correcting the defects noted below:
 1. ☒ The required items in the brief are not under appropriate headings or in the proper order.
 2. ☐ The brief does not contain a jurisdictional statement or the jurisdictional statement is incorrect.
 3. ☒ The brief does not contain a table of contents.
 4. ☐ The brief does not contain a table of authorities.
 5. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment or the status of the amendment(s) is incorrect.
 6. ☐ The brief does not contain a concise statement of each ground of rejection to be reviewed on appeal, or the statement is incorrect or inconsistent with the argument section.
 7. ☐ The brief does not contain a statement of facts.
 8. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal.
 9. ☐ The brief does not contain a claims section in the appendix, a copy of the pending claims is missing, or the copy of the pending claims is not correct.
 - 9a. ☐ The status of at least one of the claims in the claims section is not correct. See Claims _____. The status of every claim shall be set out after the claim number and in parentheses (e.g., 1 (rejected), 2 (withdrawn), 3 (objected to), 4 (cancelled), and 5 (allowed)).
 10. ☒ The brief does not contain a claims support and drawing analysis section in the appendix.
 11. ☐ The brief contains two or more affidavits or declarations in the evidence section of the appendix, but the evidence section does not contain a table of contents.
 12. ☐ The brief does not contain a copy of the final or significant interlocutory decision rendered by the Board or a court in the related case(s) identified in the statement of related case section.
 13. ☐ The brief exceeds the page limit (30 pages) without a grantable petition under 37 CFR 41.3.
 14. ☐ The brief does not contain a signature block or the signature block is incorrect.
 15. ☐ Other (including any explanation in support of the above items): _____

/Sharmalla Coates/
Sharmalla Coates, Supervisor
Patent Appeal Center